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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 NATIONAL LAWYERS' GUILD SAN
14 FRANCISCO CHAPTER, et al.,

15 Plaintiffs,

16 v.

17 U.S. DEPARTMENT OF HOMELAND
18 SECURITY, et al.,

19 Defendants.
20 _____/

No. C 08-5137 CRB

**JOINT STATUS REPORT
AND STIPULATION TO STAY
PROCEEDINGS; AND ~~PROPOSED~~
ORDER**

21 WHEREAS, in an effort to narrow the issues before the Court,

22 1. On February 13, April 24, and June 24, 2009, the parties informed the Court that
23 Defendants had agreed to reconsider the scope of their searches, to reconsider the bases for their
24 withholding of records previously produced, and/or to perform secondary searches in response to
25 Plaintiffs' February 2008 FOIA request (and, in the case of EOIR, in response to Plaintiffs' June
26 2008 FOIA request). On April 27 and June 25, 2009, the Court approved the parties' stipulations
27 to stay proceedings to allow these secondary searches, and the processing of potentially responsive
28 records, to take place; and

1 2. On July 24, 2009, the parties informed the Court that four Defendants — DHS, DHS-
2 OIG, CIS, and CBP — had completed their secondary searches and/or processing, and that the
3 parties had agreed to confer by a series of dates certain in an effort to resolve Plaintiffs' claims
4 against those Defendants without the Court's intervention. On the same date, the parties informed
5 the Court that the two other Defendants — EOIR and ICE — had not yet completed the processing
6 of potentially responsive records identified from their secondary searches, and provided an update
7 on the status of those Defendants' searches and processing. On July 30, 2009, the Court approved
8 the parties' stipulation to stay proceedings to allow negotiations and processing to continue; and

9 3. On October 30, 2009, the parties informed the Court that, as a result of those
10 negotiations, Plaintiffs stipulated that they did not contest the adequacy of the searches performed
11 by Defendants DHS, DHS-OIG, or CIS, or the propriety of the withholdings made by DHS-OIG;
12 accordingly, pursuant to Rule 41(a)(1)(A)(ii), the parties filed a stipulation of dismissal of this action
13 with prejudice with respect to Defendants DHS, DHS-OIG, and CIS. On the same date, the parties
14 informed the Court that Defendant CBP had provided Plaintiffs with a letter describing the scope
15 of its search and a preliminary, partial Vaughn index explaining the bases for its withholdings; that
16 Plaintiffs had responded with several objections and/or requests for clarification; and that the parties
17 intended to negotiate further in an attempt to resolve any remaining issues without the Court's
18 intervention. In addition, the parties informed the Court that Defendant EOIR had completed its
19 secondary search, and had agreed in principle to provide Plaintiffs with a letter describing the scope
20 of its search and a preliminary, partial Vaughn index, but that additional time was needed to reach
21 agreement on the parameters and dates certain for such a process. Finally, the parties informed the
22 Court that Defendant ICE's processing of potentially responsive records continued, and that ICE
23 would continue to make interim productions of responsive, nonexempt records on a monthly basis;
24 and

25 4. On November 12, 2009, the Court approved the parties' stipulation (a) to further stay
26 proceedings through and including January 30, 2010; and (b) to submit a joint report advising the
27 Court on the status of the above-mentioned negotiations and processing, and/or a stipulation
28 proposing a schedule to govern further proceedings, no later than January 30, 2010; and

1 5. In accordance with the parties' status report of October 30, 2009, the parties have
2 conferred on several occasions to clarify the scope of Defendant CBP's search and to discuss the
3 propriety of its withholdings. CBP has provided Plaintiffs with additional information regarding
4 these issues, most recently via letter dated January 27, 2010. Plaintiffs are not yet prepared to
5 stipulate to the adequacy of CBP's search or the propriety of its withholdings; however, further
6 negotiation may eliminate the need for judicial resolution of these issues; and

7 6. With respect to Defendant EOIR, in an attempt to further narrow the issues before
8 the Court, and perhaps to resolve Plaintiffs' claims without the Court's intervention, the parties have
9 agreed that:

- 10 a. By February 12, 2010, EOIR will provide Plaintiffs with a letter that
11 describes the scope of its search for responsive records;
- 12 b. By March 5, 2010, Plaintiffs will respond with a letter that either (i)
13 stipulates that Plaintiffs do not contest the adequacy of the search; or (ii)
14 states that Plaintiffs believe that the search was inadequate, and identifies any
15 objection(s) with specificity; and
- 16 c. By March 19, 2010, the parties will confer in an effort to determine how to
17 proceed with respect to Plaintiffs' claims challenging the adequacy of
18 EOIR's search; and

19 7. Further, with respect to records that Defendant EOIR has withheld as exempt from
20 disclosure:

- 21 a. Plaintiffs have identified those records that they contend EOIR improperly
22 withheld (in whole or in part) under the FOIA and for which Plaintiffs
23 request a Vaughn index — namely, records bearing Bates numbers
24 EOIR-2008- 5140(4)-000103, EOIR-2008-5140(4)-000500, EOIR-2008-
25 5140(4)-000504, and EOIR-2008-5140(4)-000522; all records bearing the
26 Bates number prefix EOIR-2008-5140(7); and all records withheld in full
27 pursuant to EOIR's transmittal letter dated August 24, 2009; and
28

- 1 b. Plaintiffs have stipulated that they do not contest the propriety of the
2 withholdings in any other record that EOIR has produced; and
- 3 c. The parties have agreed that, by February 26, 2010, EOIR will provide
4 Plaintiffs with a preliminary, partial Vaughn index explaining the bases for
5 the withholdings that Plaintiffs contest; and
- 6 c. By March 19, 2010, Plaintiffs will respond with a letter that, with respect to
7 each of the withholdings explained in the preliminary, partial Vaughn index,
8 either (i) stipulates that Plaintiffs do not contest the propriety of the
9 withholding; or (ii) states that Plaintiffs believe that the withholding was
10 improper, and identifies their objection(s) with specificity; and
- 11 d. By April 2, 2010, the parties will confer to determine how to proceed with
12 Plaintiffs' claims challenging the propriety of EOIR's withholdings; and

13 8. Defendant ICE currently believes that processing of the approximately 24,000 pages
14 of potentially responsive records located during its secondary search is complete. As of the parties'
15 status report of October 30, 2009, the ICE FOIA office had estimated that approximately 19,084
16 pages of potentially responsive records remained to be processed, and the parties had agreed that,
17 given the resource constraints on ICE's FOIA office, a processing rate of approximately 1,000 pages
18 of potentially responsive records per month was reasonable. However, the FOIA office later
19 determined that that estimate included two large spreadsheet files totaling approximately 22,460
20 pages, which were relatively easy to process and were produced on November 25, 2009. ICE
21 produced an additional 736 pages of responsive, nonexempt records on November 25, 2009; 1,335
22 pages on December 31, 2009; and 528 pages on January 28, 2010. An additional 3,306 pages were
23 determined to be duplicate or nonresponsive documents. The ICE FOIA office plans to conduct
24 quality control checks during the next few weeks to confirm that processing is, in fact, complete,
25 and the parties have agreed to confer by February 26, 2010, to discuss ways to move toward
26 resolution of Plaintiffs' claims against ICE; and

27 WHEREAS it would minimize litigation costs and conserve judicial resources to stay
28 further proceedings in this case to permit the above-mentioned negotiations to continue, and to

1 permit the parties to confer further as described above;

2 IT IS HEREBY AGREED AND STIPULATED by and between the parties, through
3 undersigned counsel, subject to the approval of the Court, that:

- 4 1. Further proceedings in this case are stayed for a period of approximately 3 months
5 through and including April 30, 2010; and
- 6 2. No later than April 30, 2010, the parties shall submit a joint report advising the Court
7 on the status of the above-mentioned negotiations and processing and/or a stipulation
8 proposing a schedule to govern further proceedings.

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Dated: January 29, 2010

Respectfully submitted,

/s/ Jennifer Lee Koh
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Attorneys for Plaintiffs

SIGNATURE ATTESTATION

In accordance with General Order 45(X), I hereby attest that I have obtained Jennifer Lee Koh's concurrence in the filing of this document.

/s/ Eric B. Beckenhauer
ERIC B. BECKENHAUER

~~[PROPOSED]~~ ORDER

Pursuant to stipulation, **IT IS SO ORDERED.**

Dated: February 2, 2010

CHARLES R.
United States District Judge

